

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

MAR 17 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Amendment of Section 73.202(b),	)	MM Docket 97-252
Table of Allotments,	)	RM-9206
FM Broadcast Stations	)	
(Columbia City, Florida).	)	

TO: Chief, Allocations Branch  
Policy and Rules Division  
Mass Media Bureau

REPLY COMMENTS OF MAX MEDIA

Max Media ("Max"), by counsel, hereby replies to the "Comments, Opposition and Counter-Proposal of Dickerson Broadcasting, Inc." filed in the above-identified proceeding on March 2, 1998.

In response to Max's Petition for Rulemaking, the Commission initiated this proceeding with a Notice of Proposed Rule Making ("NPRM") released on January 9, 1998. In the NPRM, the Commission proposed to allot Channel 243A to Columbia City, Florida. The Commission also requested additional information to support Max's claim that Columbia City possesses the attributes of a "community" for allotment purposes. Responding to that request, Max filed Comments which included voluminous documentation about the commercial and social characteristics of Columbia City.

In its Comments, Dickerson Broadcasting, Inc. ("DBI") asserted that Columbia City is not a community for allotment purposes, and proceeded to present a counterproposal. DBI's pleading is wrong in its assessment that Columbia City does not

qualify as a community, and its counterproposal is defective for legal and technical reasons. DBI's Comments have no merit, should be dismissed without consideration, and therefore should not affect the Commission's decision in this proceeding.

**Columbia City Is a Community for Allotment Purposes.**

DBI argued that Columbia City is not a community because it has no defined boundaries and because it lacks the minimal population and commercial activity expected of a community.

The first of DBI's arguments concerning the community's lack of precise borders is a red herring. It has long been held that precisely ascertainable borders are not a prerequisite for a community to be licensable. Beacon Broadcasting, 2 F.C.C.Rcd. 3469 (1987), aff'd. 2 F.C.C.Rcd. 7562 (1987); Kenansville, Florida, 5 F.C.C.Rcd. 2663 (MMB 1990), aff'd. 10 F.C.C.Rcd. 9831 (1995).

Rather, the proponent of a community merely must show that the residents of the locality are regarded as a distinct group. The place must be shown to be a geographically identifiable population grouping. Revision of FM Assignment Policies and Procedures, 90 F.C.C.2d 88, 101 (1982). This can be demonstrated by the testimony of local residents or by objective or subjective evidence indicating the existence of a community. Booneville, California, 12 F.C.C.Rcd. 1402 (MMB 1997), citing, Beacon Broadcasting, supra.

Max provided just such a demonstration in its Comments. Max identified and documented the existence of 28 local community service institutions and/or commercial establishments

which exist in and serve Columbia City. Principals of many of these entities offered statements to describe their place in and identification with the community. In addition, Max presented declarations from 83 residents of Columbia City who indicated their sense of community in the area called Columbia City and their use of and reliance upon institutions and commercial establishments in the community.

Max also provided population data with its Comments. Figures provided to Max by the Columbia Baptist Church originating from Scan/US, Inc. indicate that the area within a three-mile radius of the Columbia City Elementary School has an estimated 1998 population of 2,385 -- up from 1,911 in 1990 and 496 in 1980.

DBI submitted a letter dated January 26, 1998 from Dale Williams, County Coordinator for Columbia County as support for its proposition that Columbia City is not a community. Mr. Williams stated that "Columbia City might better be referred to an area of the County rather than a community." In Exhibit 1 attached hereto, there is a subsequent letter from Mr. Williams in which he explains his use of the term "community" in his letter written for DBI. He states that he only intended to indicate that Columbia City is not a politically incorporated entity. He further states that several unincorporated areas in Columbia County operate as communities. He emphatically states that his January 26 letter was not intended to rebut or refute any other government agency's definition of community or its determination that any place is or is not a community. Most tellingly, Mr. Williams also states the DBI principal Ben

Dickerson did not inform him of the use Dickerson planned to make of Mr. Williams' January 26 letter. Thus, in writing his prior letter, Mr. Williams had no frame of reference for the significance (to Dickerson) of what he was being asked to state. Mr. Williams' January 26 letter therefore has little probative value.

The evidence presented by Max completely refutes DBI's assertion that Columbia City is not a community. Columbia City is a growing, thriving center of commerce and social activity. DBI's claim to the contrary is disproved by the evidence and should be rejected.

**DBI's Counterproposal Is Defective Beyond Repair.**

DBI presented a counterproposal in its Comments which cannot be seriously considered because it violates numerous established separation and cut-off policies. The basic premise of the counterproposal appears to be DBI's desire to upgrade its station at Starke, Florida, WEAG-FM, from Channel 292A to Channel 295C2. To do that, DBI proposes that Channel 243C3 at Cross City, Florida be substituted for the present allotment of Channel 295C1 at Cross City. Station WDFL(FM) is currently authorized on the present Cross City allotment. The allotment of Channel 243C3 at Cross City would preclude the use of Channel 243A at Columbia City. DBI says that this arrangement would also allow for the beneficial upgrading of an allotment at Beverly Hills, Florida from Channel 292C3 to 292C2.

Submitted as Exhibit 2 is an Engineering Statement which demonstrates that DBI's counterproposal would cause several

violations of the Commission's FM separation rules. All of these revolve around the proposed use of Channel 243C3 at Cross City. Such an allotment would be shortspaced to each of the following:

1. The authorized site for a construction permit on Channel 242A at Yankeetown, Florida (File No. BPH-930909ME), owned by Nature Coast Communications.

2. The licensed site for WHTQ, Orlando, Florida, on Channel 243C, owned by Infinity Holdings Corporation.

3. The reference coordinates for a proposed allotment on Channel 240C3 at Horseshoe Beach, Florida, submitted as a counterproposal in MM Docket 97-239 by Dixie County Broadcasters.

DBI's proposal fails to comport with existing policy on the requirements it would make of WDFL, the existing Cross City station, if that station were to move to Channel 243C3. WDFL would be downgraded from a Class C1 facility. Secondly, WDFL would have to move to a new transmitter site to avoid short-spacing or use the contour protection procedures of Section 73.215 at its present site. In none of these alterations proposed for WDFL does DBI indicate any consent by WDFL. In fact, DBI asserts that it should not be obligated to obtain WDFL's consent because WDFL already has authorization to move to another site. DBI's proposition is without precedent. On the other hand, it is well-established that a rulemaking proposal which necessitates changes in the transmitter sites for other stations without the consent of those stations is defective and

subject to dismissal without consideration. Allouez, Wisconsin, 8 F.C.C.Rcd. 2809 (MMB 1993).

In the alternative, if WDFL were to remain at its present site, it would be shortspaced to the Yankeetown and Orlando stations. Of course, DBI has not obtained the consent of those parties either.


DBI's counterproposal is also fatally late with respect to the previously filed allotment proposal for Horseshoe Beach. Dixie County Broadcasters requested the allotment of Channel 240C3 to Horseshoe Beach as a counterproposal in Docket MM 97-239. Comments and reply comments in that proceeding were due February 2, 1998, and February 17, 1998, respectively. DBI's counterproposal here was filed on March 2, 1998 -- well after those deadlines. Thus, DBI's counterproposal, insofar as it conflicts with the counterproposal in Docket MM 97-239, cannot be considered as long as the conflicting proposal is under consideration in the other proceeding.

DBI's counterproposal is completely unacceptable. It creates spacing problems without proposing reasonable solutions. DBI appears to expect several other parties to swallow hard and accommodate DBI's desired upgrade at their own inconvenience. This approach is inconsistent with the Commission's current policies and precedents. DBI has shown no adequate public policy justification for its requests.

Wherefore, Max Media respectfully urges the Commission to dismiss DBI's Comments without consideration and to grant Max's Petition for the allotment of Channel 243A to Columbia City, Florida.

Respectfully submitted,

MAX MEDIA

By:   
Donald E. Martin

DONALD E. MARTIN, P.C.  
P. O. Box 19351  
Washington, D.C. 20036  
703-671-8887

Its Attorney

March 17, 1998

**EXHIBIT 1**



District No. 1 - Ronald Williams  
District No. 2 - Frank Albury  
District No. 3 - Zimmie C. Petty  
District No. 4 - James W. Knox  
District No. 5 - James Montgomery

**BOARD OF COUNTY COMMISSIONERS • COLUMBIA COUNTY**



March 16, 1998

John Newman  
1914 Maple Leaf Drive  
Windermere, FL 34786

Dear Mr. Newman:

This correspondence is to clarify the contents of a letter dated January 26, 1998 which was prepared from this office for Mr. Ben Dickerson. In that letter I referred to the fact that Columbia City would, by our particular office definition, be considered an area of the county, rather than a community. The basis for that statement was simply that Columbia City is not an incorporated area of the county. Mr. Dickerson did not inform me about his purpose in requesting this letter nor the use he intended to make of it.

There are only two incorporated communities within Columbia County: Lake City and Fort White. However, just because an area of the county is not incorporated, does not mean that it is not a community as recognized by other county, state or federal agencies. Even more important is whether the residents of a given area consider their homes and businesses to be a part of a specific community. Actually, other areas of the county, which also are not incorporated, have certainly been recognized as communities, if not by governmental agencies then at the very least by the very people who reside within them.

It was not the intent of this office to attempt to minimize or refute the criteria or determination of any particular area of Columbia County as a legitimate community as construed by any other agency or individual.

Sincerely,

A handwritten signature in cursive script, appearing to read "Dale Williams".

Dale Williams  
County Coordinator

DW/cnb

BOARD MEETS FIRST THURSDAY AT 7:00 P.M.  
AND THIRD THURSDAY AT 7:00 P.M.

**EXHIBIT 2**

# GRAHAM BROCK, INC.

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BROADCAST TECHNICAL CONSULTANTS

**ENGINEERING STATEMENT**  
**IN SUPPORT OF REPLY COMMENTS**  
**BY MAX MEDIA**  
**MM DOCKET #97-252**  
**March 1998**

**TECHNICAL EXHIBIT**

***Copyright 1998***

**ENGINEERING STATEMENT**  
**IN SUPPORT OF REPLY COMMENTS**  
**BY MAX MEDIA**  
**MM DOCKET #97-252**  
**March 1998**

This Technical Exhibit supports the reply comments of Max Media ("MM") in response to the counterproposal submitted by Dickerson Broadcasting, Inc. ("Dickerson") in MM Docket 97-252 that proposed the allotment of Channel 243A to Columbia City, Florida. The Dickerson counterproposal requested the allocation of Channel 243C3 to Cross City, Florida, and the downgrade of the Channel 295C1 allocation.<sup>1</sup> This change is to accommodate the upgrade of the Dickerson's station, licensed to Starke, Florida. Dickerson requested an upgrade of the Starke allotment from Channel 292A to Channel 295C2.

Exhibit #1 is a computerized printout of the Dickerson Channel 243C3, Cross City, proposal (from the present WDFL transmitter site) demonstrating that this allocation is shortspaced to the three facilities or proposals. These three facilities are:

- 1) The Construction Permit site for Channel 242A, Yankeetown, Florida (BPH-930909ME), Nature Coast Communications.
- 2) The licensed site for WHTQ, Channel 243C, Orlando, Florida (BLH-850513KL), Infinity Holdings Corporation.
- 3) The proposed allotment, Channel 240C3, Horseshoe Beach, Florida (RM9237), Dixie County Broadcasters.<sup>2</sup>

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1) Channel 295C1 was allotted to Cross City, Florida, for WDFL as a replacement for Channel 292A.

2) Comments to the Otter Creek proposal (MM Docket 97-239) NPRM 12/12/97 were due 2/2/98 with reply comments by 2/17/98. The Dickerson proposal was filed March 6, 1998, well past the deadline dates.

Exhibit #1, therefore, demonstrates the counterproposal to the Columbia City proceeding forwarded by Dickerson violates the spacing requirements of §73.207 of the Commission's rules.

It is recognized that Dickerson specified an "allocation site" for Channel 243C3, Cross City, Florida, which differs from the licensed WDFL facility. Exhibit #2 is a computerized printout of the Dickerson, Channel 243C3, Cross City, proposal (from the Dickerson reference coordinates) demonstrating that this proposal would be shortspaced to the proposed allotment of Channel 240C3, Horseshoe Beach, Florida (RM9237), as submitted by Dixie County Broadcasters as a counterproposal to Channel 240A Otter Creek, Florida (RM-9195).

Dickerson's counterproposal is, therefore, deficient and should be returned without any consideration since Dickerson is proposing a forced downgrade for WDFL from Channel 295C1 to Channel 243C3. The use of the present WDFL site does not meet spacing requirements of Channel 243C3. The use of the present WDFL site would require §73.215 processing, which, in an allocation situation, is contrary to the Commission's rules. Using the provisions of §73.215 (contour protection) for Channel 243C3, WDFL could not operate as a maximum C3 facility.<sup>3</sup> The proposed site for Channel 243C3 is not the authorized site for WDFL. Finally, Dickerson fails to consider the proposal for Channel 240C3 at Horseshoe Beach, Florida, which precludes the allocation of Channel 243C3 at Cross City.<sup>4</sup>

We have tried to be as accurate as possible in the preparation of this report. Should there be any questions concerning the information contained herein, we welcome the opportunity to discuss the matter by phone at 912-638-8028.

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3) WDFL would be limited to 19.0 kilowatts at the present HAAT of 56 meters or a power of 7.5 kilowatts at an HAAT of 100 meters at the presently licensed WDFL transmitter site to protect WHFQ and the construction permit at Yankeetown.

4) The Horseshoe Beach counterproposal to Otter Creek was entered into the FCC Engineering Database (available free to the public at [www.fcc.gov](http://www.fcc.gov)) on January 30, 1998. The failure of Dickerson to utilize a current database does not relieve him of his responsibility to properly protect other facilities when submitting his counterproposal.

**ENGINEERING STATEMENT**  
**IN SUPPORT OF REPLY COMMENTS**  
**BY MAX MEDIA**  
**MM DOCKET #97-252**  
**March 1998**

**EXHIBIT #1**

**Present WDFL Licensed Site**

REFERENCE		DISPLAY DATES
29 36 35 N	CLASS C3	DATA 03-13-98
83 08 03 W	Current rules spacings	SEARCH 03-13-98
----- CHANNEL 243 - 96.5 MHz -----		

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
AD243	243A	Columbia	FL	39.5	66.37	142.0	-75.63 *
AD	30 04 12	82 41 42	0.000 kW	0M	41.3	88.3	
	Max Media				RM9206		971119
AD240	240C3	Horseshoe Beach	FL	218.4	23.88	43.0	-19.12 *
AD	29 26 28	83 17 15	0.000 kW	0M	14.8	26.7	
	Dixie County Broadcasters				RM9237		980130
>Counterproposal							
CP242	242A	Yankeetown	FL	145.2	76.18	89.0	-12.82 *
CP CN	29 02 43	82 41 12	2.750 kW	149M	47.3	55.3	
	Nature Coast Communications C				BPH930909ME		990826
WHTQ	243C	Orlando	FL	119.3	230.58	237.0	-6.42 *
LI CN	28 34 51	81 04 32	100.000 kW	487M	143.3	147.3	
	Infinity Holdings Corporation				BLH850513KL		
AD240	240A	Otter Creek	FL	144.1	45.01	42.0	3.01
AD	29 16 52	82 51 42	0.000 kW	0M	28.0	26.1	
	Tony Downes				RM9195		971104
>Site Restriction 9.8km Southwest							
WYZK.A	244C2	Valdosta	GA	345.7	137.14	117.0	20.14
AP CN	30 48 28	83 29 22	31.000 kW	190M	85.2	72.7	
	CDJ, Inc.				BMPH961122ID		
WYZK.C	244C2	Valdosta	GA	344.5	138.41	117.0	21.41
CPM CN	30 48 43	83 31 20	50.000 kW	150M	86.0	72.7	
	CDJ, Inc.				BMPH940802IE		980406
WYZK	244A	Valdosta	GA	356.9	136.15	89.0	47.15
LI CN	30 50 10	83 12 40	3.000 kW	91M	84.6	55.3	
	CDJ, Inc.				BLH850627KF		
>*To Channel 244C2 per D88-436							

**ENGINEERING STATEMENT**  
**IN SUPPORT OF REPLY COMMENTS**  
**BY MAX MEDIA**  
**MM DOCKET #97-252**  
**March 1998**

**EXHIBIT #2**

**Dickerson Reference Coordinates - Channel 243C3**

REFERENCE		DISPLAY DATES
29 45 08 N	CLASS C3	DATA 03-13-98
83 09 39 W	Current rules spacings	SEARCH 03-13-98
----- CHANNEL 243 - 96.5 MHz -----		

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
AD243	243A	Columbia	FL	51.7	57.14	142.0	-84.86 *
AD	30 04 12	82 41 42	0.000 kW	0M	35.5	88.3	
	Max Media				RM9206		971119
AD240	240C3	Horseshoe Beach	FL	199.5	36.60	43.0	-6.40 *
AD	29 26 28	83 17 15	0.000 kW	0M	22.8	26.7	
	Dixie County Broadcasters				RM9237		980130
>Counterproposal							
CP242	242A	Yankeetown	FL	149.6	90.87	89.0	1.87 <
CP CN	29 02 43	82 41 12	2.750 kW	149M	56.5	55.3	
	Nature Coast Communications C				BPH930909ME		990826
WHTQ	243C	Orlando	FL	122.2	240.85	237.0	3.85
LI CN	28 34 51	81 04 32	100.000 kW	487M	149.7	147.3	
	Infinity Holdings Corporation				BLH850513KL		
WYZK.A	244C2	Valdosta	GA	345.0	121.21	117.0	4.21
AP CN	30 48 28	83 29 22	31.000 kW	190M	75.3	72.7	
	CDJ, Inc.				BMPH961122ID		
WYZK.C	244C2	Valdosta	GA	343.7	122.51	117.0	5.51
CPM CN	30 48 43	83 31 20	50.000 kW	150M	76.1	72.7	
	CDJ, Inc.				BMPH940802IE		980406
AD240	240A	Otter Creek	FL	151.0	59.73	42.0	17.73
AD	29 16 52	82 51 42	0.000 kW	0M	37.1	26.1	
	Tony Downes				RM9195		971104
>Site Restriction 9.8km Southwest							
WYZK	244A	Valdosta	GA	357.7	120.25	89.0	31.25
LI CN	30 50 10	83 12 40	3.000 kW	91M	74.7	55.3	
	CDJ, Inc.				BLH850627KF		
>*To Channel 244C2 per D88-436							

**AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT**

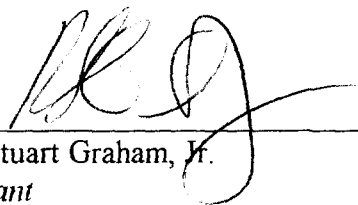
*State of Georgia    )*  
*St. Simons Island ) ss:*  
*County of Glynn    )*

**R. STUART GRAHAM**, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Max Media to prepare the attached Technical Exhibit.


His qualifications are a matter of record before the Federal Communications Commission. He is a graduate of Auburn University and has been active in Broadcast Engineering since 1972.

The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

*This the 16th day of March, 1998.*

  
\_\_\_\_\_  
R. Stuart Graham, Jr.  
*Affiant*

*Sworn to and subscribed before me  
this the 16th day of March, 1998*

  
\_\_\_\_\_  
Notary Public, State of Georgia  
My Commission Expires: September 12, 1999



CERTIFICATE OF SERVICE

I, Donald E. Martin, hereby certify this 17th day of March, 1998 that I have caused a copy of the foregoing document to be served by United States mail with first class postage prepaid upon the following:

Harry F. Cole, Esquire  
Bechtel & Cole  
Suite 250  
1901 L Street, N.W.  
Washington, D.C. 20036  
Counsel for Dickerson Broadcasting, Inc.

David G. O'Neil, Esquire  
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1350 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
Counsel for Women in FLA Broadcasting, Inc.

  
Donald E. Martin